whether they are free from disease or not; no matter whether they may do an injury to the inhabitants of the state or not; and if you do bring them in, even for the purpose of carrying them through the state without unloading them, you shall be subject to extraordinary liabilities." Such a statute, we do not doubt, it is beyond the power of a state to enact. To hold otherwise would be to ignore one of the leading objects which the constitution of the United States was designed to secure.

In coming to such a conclusion, we have not overlooked the decisions of very respectable courts in Illinois, where statutes similar to the one we have before us have been sustained: *Yeazel* v. *Alexander*, 53 Ill. 254. Regarding the statutes as mere police regulations, intended to protect domestic cattle against infectious disease, those courts have refused to inquire whether the prohibition did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than exertions of police power. That inquiry, they have said, was for the legislature and not for the courts. With this we cannot concur. The police power of a state cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the federal constitution. And as its range sometimes comes very near to the field committed by the constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion.

The judgment of the Supreme Court must, therefore, be reversed and the record remanded, with instructions to reverse the judgment of the Circuit Court of Grundy county and to direct that court to award a new trial.

Supreme Court of New York.

A. L. HELMBOLD *v.* THE H. T. HELMBOLD MANUFACTURING CO.

A court of equity will never grant its protection to a trade-mark which expresses a falsehood, as against one which expresses the truth.

General words, the common property of English speaking people, cannot be appropriated as trade-marks to the exclusion of others who may desire to use them; and when therefore a man uses them in connection with his own name the latter simply identifies his goods and is the only distinctive feature of the trade-mark.

In such a case the right to use his name is a personal right and does not pass to his assignee by an adjudication in bankruptcy.

A man's right to the use of his own name as a component part of a trade-mark can only be interfered with when it is used fraudulently with intent to deceive the public or to pirate upon the business of another.

MOTION for injunction. The bill set forth that Henry T. Helmbold was the original manufacturer of an article known as "H. T. Helmbold's Highly Concentrated Compound Fluid Extract of Buchu," and that he continued such manufacture for many years; that on September 13th 1872 the said Helmbold was declared and adjudicated a bankrupt, and on November 4th of the same year an assignee in bankruptcy of his estate was appointed; that under the order of the Bankrupt Court the title to and right to use the name "H. T. Helmbold's Highly Concentrated Compound Fluid Extract of Buchu," in the manufacture and sale of the compound, which had been acquired by said Henry T. Helmbold through use, became vested in such assignee, who, in turn, transferred it to the plaintiff.

The plaintiff further claimed that from the year 1862 up to March 1873, he manufactured the preparation which bore the name hereinbefore stated, for his brother, Henry T. Helmbold, and for the assignee in bankruptcy, and since that date he has manufactured it on his own account, using the aforesaid name and the labels and wrappers which had been used by the said Henry T. Helmbold.

The other facts fully appear in the opinion.

Ira D. Warren, for complainant.

George M. Curtis, for defendant.

The opinion of the court was delivered by

WESTBROOK, J.—The wrapper or label around the bottle containing the preparation which the plaintiff vends, in addition to the name indicating the article to be that of H. T. Helmbold, also states as follows: "None genuine unless signed H. T. Helmbold." "Principal depots for the sale of Helmbold's genuine preparations at Helmbold's Temple of Pharmacy, Continental Hotel, and Helmbold's Medical Depot, 101 South Tenth street, Philadelphia, Pa." "Remarks—The quality and purity of these preparations is guaranteed by the reputation acquired in many years' experience, and also attention to business and the confidence and liberal patronage of the medical faculty and the public. Both the fluid

and other extracts have been admitted to use in the United States army, and in all the state hospitals and public sanitary institutions, as well as in private practice, are in general demand as invaluable remedies." "Directions for using Helmbold's genuine preparation inside, printed in English, French, German and Spanish."

It will be observed that the effect of the label as used by the plaintiff is to assure the public that the preparation put up by him and which he charges to be "a useful and valuable article," is not only the original medicine manufactured by H. T. Helmbold, but that it is also prepared under the latter's personal supervision, and its usefulness and efficacy are guaranteed by his personal reputation and experience.

The defendant is a manufacturing company organized under the laws of this state, of which Henry T. Helmbold, the original compounder of the medicine which is the cause of dispute between the parties to this action, was and is one of the co-partners; and such company, by the aid and concurrence of said Henry T. Helmbold, manufactures and puts up for sale an article also called "Henry T. Helmbold's Highly Concentrated Compound of Fluid Extract." Whilst the preparation of the defendant has the same name with that of the plaintiff, and its sale and use are recommended by printing upon the wrapper the same arguments and reasons which the plaintiff's wrapper contains, yet such printing is in carmine ink, and it professes not to be manufactured by the plaintiff or at his establishment in Philadelphia, but by the defendant in the city of New York.

No attempt has been made by the defendant to vend its article as that manufactured by the plaintiff, but, on the contrary, the plaintiff complains that the defendant has warned the public against the preparation of the plaintiff, upon the alleged ground that it was not compounded according to the original Helmbold receipt. The answer is verified by Henry T. Helmbold, who has also made the principal affidavit in opposition to the injunction asked for by the plaintiff.

Upon the facts which have been detailed, the first clear and conclusive answer to the application of the plaintiff for the injunction restraining the defendants from using the name given to its preparation is, that the plaintiff's label is untrue, and the effect of granting the relief asked for would be the issue of an order of the court prohibiting the use of a name and a wrapper which states the truth,

for the benefit of one who uses a name and wrapper which convey an untruth.

If what the plaintiff states upon the wrappers of his bottles containing the medicine, and which has been hereinbefore stated, is remembered, it will appear, as has already been stated, that he undertakes to sell his compound, not only under the name and alleged trade-mark which Henry T. Helmbold formerly used, and which he still claims to use under and through the corporation with which he is now connected, but upon a representation that said Helmbold superintends personally its manufacture, and by his own signature certifies to the genuineness of each bottle. This clearly and confessedly is false, and the plaintiff is entitled to no protection in a business carried on by means of untrue representations and statements.

As Henry T. Helmbold is personally employed with the defendant, and whatever value his personal care and supervision gives to the defendant's business fairly belongs to it and not to the plaintiff, an order of court should not suppress the publication of the truth and allow the utterance of falsehood.

Whilst, for the reason, then, just given, the injunction asked by the plaintiff must be refused, it seems equally clear that the plaintiff acquired no title whatever to the so-called trade-mark by the proceedings in bankruptcy.

It is not denied that Henry T. Helmbold could, by voluntary sale and assignment, transfer the right to use his knowledge, and name, but it is not seen how the right to use his own knowledge and name can be taken from him by any judicial proceeding whatever. If they can be, then the merchant who has become unfortunate, but who has still a knowledge and a name with which to begin business anew, must, if he has been adjudged a bankrupt, be content to leave with his assets his brains and his character.

This is no over-statement of the case. Admitting that the plaintiff has the secret of the compound, which was once Henry T. Helmbold's alone (this, however, the latter most expressly denies), did the decree of the bankrupt court transfer the sole right to use it to the assignees in bankruptcy and thence to the plaintiff? This will not be claimed; neither is it pretended that the mixture is not in fact what its name declares, "A Fluid Extract of Buchu," the right to make which and to declare by plain words in common and general use the character of the mixture, must, in the absence of

a patent protecting the process of manufacture, belong to any one able to make the article and who desires to utilize his knowledge by its preparation and sale. For example: A. could not compound a fluid extract from coffee, and after its introduction to the public as such an article, prevent B., who has the knowledge and skill necessary to produce a similar extract, from using such knowledge and skill and from employing suitable and ordinary words to inform buyers truly as to its nature. If B. can, in such a case, be enjoined, then language in general use to express thought and to convey information can be appropriated, and any one will then be able to own words which are now the common property of all English speaking people. A trade-mark must, in a case like this, as the term imports, be one consisting of a word, an expression, or a mark invented or adopted by the owner, which designates and distinguishes his production from the general manufacture of the same article, and it cannot be the appropriation of words belonging to the general public which describe truly a known product. As before stated, a particular process of manufacture may be owned when the legal steps to acquire such ownership have been taken, or a particular mark or name designating the manufacturer may by use become the subject of protection, but words and phrases in common use describing truly an article offered to the public cannot become individual property any more than those generally employed in life which must be used to make speech intelligible.

Assuming, then, that personal knowledge and the right to use words truly descriptive of things cannot, by legal process, be taken from an individual against his will, and without his voluntary surrender and assignment thereof, what remains of the plaintiff's case? To a preparation of buchu, which was a drug well known by that name, Mr. Henry T. Helmbold had given his own name as compounder thereof. This was its only distinctive feature. The remainder of the so-called trade-mark consisted of words descriptive of the compound, as much so as "extract of sugar" or "extract of lemon" would describe what was really the extract of either. Of the right to use his own name in such a preparation, can he be deprived?

When applied to his own personal compound, his name simply identifies his own goods. If any other person assumes it in a similar manufacture the law would protect him, because the public is deceived and he is injured. The imposition and the injury enjoined

come from the employment, not of a mere mark, the property of another, but from the direct appropriation of a name identifying a man and his own, to whom and his it can alone be applicable. The name of a man is a part of his being, so indissolubly connected with and attached to him that we fail to see how the one which distinguishes and separates Henry T. Helmbold from all mankind, and enables the public to know him and that which he has prepared, can be taken from him and given to another, so that the latter, by the use of such name, may vend and sell his own preparations as if they were those of the former. If this can be done, then the law and the courts not only enable the quack and the adventurer to impose their compounds and manufactures upon the public under the disguise and cover of an honored name, but they have, with the property of the unfortunate bankrupt, also appropriated and transferred his knowledge, skill and reputation. Is this the policy of our bankrupt statutes? If it is, then, instead of being a mode of relieving the debtor class, as well as a source of protection to their creditors, every bankruptcy statute is a grave, in which every hope and aspiration of the future of him who can be subjected to its operation must be forever buried. Hitherto the unfortunate being whose property has been swept away by the vicissitudes of business has supposed his knowledge and reputation were still left to him as a capital for a new beginning. That resource is now also gone, if the plaintiff in this cause is right in his claim, and the future of the bankrupt is shrouded in a darkness so thick and gloomy that not a single ray of light is left to relieve its horrors. To the soundness of such a result this court is unable to subscribe. The name of Henry T. Helmbold must still belong to him to whom his parents gave it. No law and no court can take it from him. The property which he had acquired belongs to his creditors, but the name, and whatever of character, good or bad, belonging to it, and which he has himself made, are his, and must so continue to be until he voluntarily parts with them. He has the right to make any extract he pleases, and to tell the public by the use of his own name that the preparation is his, and not that of another, and neither the plaintiff nor any other person can place that name upon a preparation not his, against his will, and deprive him of the use thereof. Such act would not only impose upon others, but be so cruel and outrageous

toward him that, as it seems to me, no law and no court could justify it.

The principle that a manufacturer can apply his own name to his own creation was fully recognised by the Court of Appeals in *Menelley* v. *Menelley*, 62 N. Y. 427. Though it was conceded that the plaintiffs in that cause had succeeded to the business of the original manufacturer (Andrew Menelley) of the famous Menelley bells, it was held that the defendant had the right to call all the bells made by him by his own name (Menelley), provided he did not so use that name as to make the public believe that his bells were constructed by the plaintiffs. Such a use of his own name is all that Henry T. Helmbold claims, and it is just such a use which the plaintiffs would prevent and enjoin. The former does not seek to impose upon the public his own mixture by giving them to understand that it is the preparation of the latter; on the contrary, he most carefully notifies the world that he, through the company which bears his name and with which he is actively connected, and not the plaintiff, manufactures the article which he offers for sale. Unlike the defendant in *Croft* v. *Day*, 7 Beavan 84, and in other cases to be found, he sails under no false colors to the injury of the public and the plaintiff, but plainly hoists his own, distinctly proclaiming that the preparation offered is his and not that of the plaintiff. Indeed, so loudly and publicly has this proclamation, by means of advertisements, been made, that one of the grounds of complaint which the plaintiff has strenuously urged is, that Henry T. Helmbold is causing the world to believe that he and not the plaintiff is that individual. In fact this cause is the exact opposite of *Croft* v. *Day*, for while in that the complaint was that the defendant was causing the world to believe that he was the original Day & Martin, the famous blacking manufacturers, which was false, the complaint in this is that the original and genuine Henry T. Helmbold will not allow the plaintiff falsely to assume that individual's name, and thus enable him (the plaintiff) to impose upon the public. If a case founded upon such a position has either soundness or justice to commend it to the equitable power of this court, the discovery thereof has not been made by the judge to whom it was presented.

For the reasons stated, the application of the plaintiff for an injunction must be denied, with costs.